

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

T & W Communications Corporation
WACR (AM)
Columbus, Mississippi

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File No. EB-00-OR-145
NAL/Acct. No. 200132620001

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: August 28, 2003

By the Enforcement Bureau, New Orleans Field Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture, we find that T & W Communications Corporation ("T & W"), licensee of AM broadcast station WACR, has apparently violated Sections 17.4(a)(2) and 73.49 of the Commission's Rules ("Rules") by failing to register the station's antenna structure and failing to provide an effective locked fence enclosing the station's antenna.¹ We conclude that T & W is apparently liable for forfeiture in the amount of six thousand five hundred dollars (\$6,500).

II. BACKGROUND

2. On August 23, 2000, an agent from the Commission's New Orleans Field Office ("Field Office") inspected AM broadcast station WACR. During the inspection, the agent determined that an antenna structure registration number was not displayed at the base of the structure. It was subsequently determined that the structure had not been registered. In addition, this station utilizes an antenna tower that has radio frequency potential at the base. During this inspection, the agent noted that the station's antenna tower was not in compliance with the Rules in that it was not enclosed within an effective locked fence. The antenna tower's fencing was adequate, however, there was no lock securing the gate of the fence.

¹ 47 C.F.R. §§ 17.4(a)(2) and 73.49

3. On September 5, 2000, a Notice of Violation (NOV) was issued to T & W for failing to register the antenna structure and failing to have an effective locked fence, as well as other violations found during the inspection of the station. On September 15, 2000, T & W submitted a written reply to the NOV addressing the violations. In its reply, T & W stated that an application for antenna structure registration was being prepared and submitted by its Washington counsel, and that a tower maintenance company had replaced light bulbs on the tower and left the lock off the gate. T & W stated that the lock had now been replaced.

III. DISCUSSION

4. Section 17.4(a)(2) of the Rule states that for an existing antenna structure that had been assigned painting or lighting requirement prior to July 1, 1996, the owner must register the structure prior to July 1, 1998.²

5. Section 73.49 of the Rules requires that antenna towers having radio frequency potential at the base be enclosed by an effective locked fence or other enclosure.³

6. Based on the evidence before us, we find that on August 23, 2000, T & W willfully⁴ violated sections 17.4(a)(2) and 73.49 of the Rules. Pursuant to Section 1.80 of the Rules,⁵ Guidelines for Assessing Forfeiture, the base forfeiture amount for failure to register the antenna structure (failure to file required forms) is \$3,000. The base forfeiture amount for failure to comply with AM tower fencing is \$7,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934 ("Act"), as amended, which include the nature, circumstances, extent, and gravity of the violation(s), and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁶ Applying Section 1.80 of the Rules and the statutory factors to the instant case, a downward adjustment is appropriate for the AM tower fencing, as the fence surrounding the antenna structure was adequate, although unlocked. As such, we find that a total forfeiture in the amount of \$6,500 is warranted.

² 47 C.F.R. § 17.4(a)(2)

³ 47 C.F.R. § 73.49

⁴ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (199).

⁵ 47 C.F.R. § 1.80

⁶ 47 U.S.C. § 503(b)(2)(D). See also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01 (discussion of upward and downward adjustment factors).

IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED THAT**, pursuant to Section 503(b) of the Act,⁷ and Sections 0.111, 0.311 and 1.80 of the Commission's Rules,⁸ T & W Communications Corporation, is hereby **NOTIFIED** of their **APPARENT LIABILITY FOR A FORFEITURE** in the amount of six thousand five hundred dollars (\$6,500) for violating Sections 17.4(a)(2) and 73.49 of the Commission's Rules, 47 C.F.R. §§ 17.4(a)(2) and 73.49.

8. **IT IS FURTHER ORDERED THAT**, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this **NOTICE OF APPARENT LIABILITY**, T & W Communications Corporation **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

9. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200132620001.

10. The response if any must be mailed to Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – TPSD, NAL/Acct. No. 200132620001, and must include the NAL/Acct. No. 200132620001.

11. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

12. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12th Street, S.W., Washington, D.C. 20554.⁹

⁷ 47 U.S.C. § 503(b)

⁸ 47 C.F.R. §§ 0.111, 0.311, 1.80

⁹ See 47 C.F.R. § 1.1914

13. **IT IS FURTHER ORDERED THAT** a copy of this **NOTICE OF APPARENT LIABILITY** shall be sent by Certified Mail, Return Receipt Requested, to T & W Communications Corporation, 1910 14th Avenue North, Columbus, Mississippi, 39701.

FEDERAL COMMUNICATIONS COMMISSION

James C. Hawkins
District Director
New Orleans Office